

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In re: BKY 10-47911  
Forest Lake Apartments Housing Associates, LLC, Chapter 11 Case  
Debtor.

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**NOTICE OF HEARING AND MOTION  
TO DISMISS CHAPTER 11 CASE**

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TO: United States Bankruptcy Judge, the United States Trustee and other parties in interest identified in Local Rule 9013.

1. Forest Lake Apartments Housing Associates, LLC (“Forest Lake” or the “Debtor”) hereby moves this Court for the relief requested below and give notice of hearing.

2. The Court will hold a hearing on this motion at 9:30 a.m. on May 11, 2011, in Courtroom 8 West, United States Courthouse, 300 South Fourth Street, Minneapolis, Minnesota.

3. Local Rule 9006-1(b) provides that responses to this Motion are due five days before the hearing, on May 6, 2011. **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334, Bankruptcy Rule 5005, and Local Rule 1070-1. This is a core proceeding. The petition in this case was filed on October 25, 2010. The case is now pending in this Court.

5. This Motion arises under 11 U.S.C. § 1112. This Motion is filed under Fed. R. Bankr. P. 9014 and Local Rules 9013-1 through 9013-3. The Debtor requests an order dismissing this chapter 11 case. The grounds for the motion are set forth below.

6. The Debtor is in the apartment rental business and its primary asset is the apartment complex located at 1243 11<sup>th</sup> Avenue Southwest, Forest Lake, Minnesota.

7. The Forest Lake property is subject to a first mortgage held by Bank Mutual, securing a \$3.744 million loan, and a second mortgage in the amount of \$250,000 held by Commerce Bank. The current unpaid balance of the Bank Mutual loan is approximately \$3.6 million, plus late fees, default interest and expenses.

8. At the March 16, 2011, Status Conference, counsel for the Debtor requested 30 days' time, during which the Debtor would decide whether to file a motion to dismiss this case or file a motion for approval of a sale under Section 363 of the Bankruptcy Code. The Court's March 16, 2011, Order granted the Debtor the requested 30 days.

9. During the intervening 30 days, the Debtor worked to determine whether a 363 sale was possible, and ultimately concluded it was not. Debtor did reach agreement with Bank Mutual, however, whereby Debtor agreed to seek dismissal of this case and then intends to enter a voluntary foreclosure with Bank Mutual. Accordingly, the Debtor now moves for dismissal of this case in order to allow the first secured lender, Bank Mutual, to pursue its remedies through a voluntary foreclosure proceeding. The Debtor believes dismissal represents the most cost effective method to satisfy the debt owed to Bank Mutual. And Bank Mutual has expressed its desire to have the case dismissed so that it can pursue its remedies through a voluntary foreclosure.

10. With regard to any possible sale, it is the Debtor's understanding that the buyer whom Debtor had previously identified has worked out terms with Bank Mutual, whereby the buyer will purchase the Forest Lake property from Bank Mutual after the foreclosure proceeding.

But the buyer will not purchase the Forest Lake property from the Debtor. Accordingly, the Debtor seeks to dismiss this case.

11. Cause exists for dismissal of the case, in that no further purpose would be served by proceeding in this chapter 11 proceeding.

12. Pursuant to Local Rule 9013-2(c), Debtor gives notice that it may, if an evidentiary hearing is required, call Hyder R. Jaweed, Chief Manager of the Debtor, to testify about the factual matters raised in this Motion. His business address is 3853 Central Avenue NE, Columbia Heights, MN 55421.

13. This Motion is verified and is accompanied by a memorandum of law, proposed order, and proof of service.

WHEREFORE, the Debtor moves the Court for an order dismissing this chapter 11 case, and for such other and further relief as the Court deems just and equitable.

Respectfully submitted,

Dated: April 15, 2011

/s/ Clinton E. Cutler

Clinton E. Cutler (#158094)  
Cynthia A. Moyer (#211229)  
FREDRIKSON & BYRON, P.A.  
200 South Sixth Street, Suite 4000  
Minneapolis MN 55402  
(612) 492-7000  
(612) 492-7077 fax  
[ccutler@fredlaw.com](mailto:ccutler@fredlaw.com)  
[cmoyer@fredlaw.com](mailto:cmoyer@fredlaw.com)

Attorneys for Debtor

### VERIFICATION

I, Hyder Jaweed, am the Chief Manager of the Debtor. Based upon my personal information and belief, I declare under penalty of perjury that the facts set forth in the preceding Motion are true and correct, according to the best of my knowledge, information and belief.

Dated: 4/14/, 2011

Signed: 

Hyder Jaweed

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UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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**MEMORANDUM IN SUPPORT OF MOTION  
TO DISMISS CHAPTER 11 CASE**

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**INTRODUCTION**

Forest Lake Apartments Housing Associates, LLC (hereafter “Debtor” or “Forest Lake”) submits this memorandum in support of its Motion to Dismiss this proceeding. The facts are set forth in the accompanying verified Motion. All capitalized terms have the meaning ascribed to them in the Motion.

**DISMISSAL IS WARRANTED IN THIS CASE**

Courts use a two-step process in determining whether to dismiss a bankruptcy case. See In re Hatcher, 218 B.R. 441, 448 (8<sup>th</sup> Cir. BAP 1998), aff’d, 175 F.3d 1024 (8<sup>th</sup> Cir. 1999); 11 U.S.C. § 1112(b). Dismissal is appropriate if: 1) cause exists; and 2) it is in the best interest of the creditors and the estate. See id. Here both elements are met.

The bankruptcy court has broad discretion in deciding whether to dismiss a chapter 11 case for cause. See In re Hatcher, 218 B.R. at 448; In re Economy Cab & Tool Co., 44 B.R. 721, 724 (Bankr. D. Minn. 1984). The statutory list of circumstances where dismissal may be appropriate is not exhaustive, and a court may consider other factors and equitable considerations in order to reach an appropriate result in an individual case. See In re Hatcher, 218 B.R. at 448.

Whether cause exists for dismissing a chapter 11 case must be determined on a case-by-case basis under the totality of the circumstances. See In re Trident Assocs. Ltd. Partnership, 52 F.3d 127, 131 (6<sup>th</sup> Cir. 1995). While cause is not defined by the Bankruptcy Code, a finding of cause is appropriate where it fulfills the policy of the Bankruptcy Code to move cases to conclusion at the earliest time and with the least expense that is consistent with the interest of justice. See 7 Lawrence P. King, ed., Collier on Bankruptcy ¶ 1112.04[2], at 1112-22 (1996).

A chapter 11 case can be dismissed at any time. See Matter of Woodbrook Assocs., 19 F.3d 312, 317 (7<sup>th</sup> Cir. 1994). The very purpose of § 1112(b) is to cut short a chapter 11 plan and confirmation process where it is pointless. See id. The court has wide discretion and must balance the equities to determine what will best serve the creditors and the estate. See In re Austin Ocala Ltd., 150 B.R. 279, 281 (M.D. Fla. 1993).

If the only remaining issue in the bankruptcy is merely a two-party dispute involving only state-law issues, dismissal is in the parties' best interest. See In re Mazzocone, 183 B.R. 402, 414-15 (Bankr. E.D. Pa. 1995); In re MELP, 143 B.R. 890, 893 (Bankr. E.D. Mo. 1992); see also In re Nugelt, Inc., 142 B.R. 661, 669 (Bankr. D. Del. 1992) (holding that it was in the best interest of major secured creditor to resolve its state law issues speedily in state court).

Here, the Debtor has determined that its prospect for a sale under 363 of the Bankruptcy Code will not come to fruition. Hence, it now seeks dismissal pursuant to its agreement with Bank Mutual, so that the first secured creditor, Bank Mutual, can pursue its remedies through a voluntary foreclosure. Dismissal is appropriate because Bank Mutual seeks to pursue its remedies through the state courts system.

### **CONCLUSION**

For all the foregoing reasons, Debtor respectfully requests that the court enter an order granting the relief requested in the Motion.

Respectfully submitted,

Dated: April 15, 2011

/s/ Clinton E. Cutler

Clinton E. Cutler (#158094)  
Cynthia A. Moyer (#211229)  
200 South Sixth Street, Suite 4000  
Minneapolis, MN 55402  
Phone (612) 492-7000  
Fax (612) 492-7077  
[ccutler@fredlaw.com](mailto:ccutler@fredlaw.com)  
[cmoyer@fredlaw.com](mailto:cmoyer@fredlaw.com)

ATTORNEYS FOR DEBTOR

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In re:

Case No. 10-47911

Forest Lake Apartments Housing Associates,  
LLC,

Chapter 11 Case

Debtor.

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**CERTIFICATE OF SERVICE**

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Cynthia A. Moyer, under penalty of perjury, states that on April 15, 2011, she caused to be served the following in each of the above-referenced cases:

Notice of Hearing and Verified Motion to Dismiss;  
Memorandum in Support of Motion to Dismiss; and  
Proposed Order

by sending true and correct copies to the parties as listed on the attached service list via the method indicated (ECF or U.S. Mail).

Dated: April 15, 2011

/s/ Cynthia A. Moyer

Cynthia A. Moyer

4878842



Forest Lake Apartments Housing Associates, LLC - Bky No. 10-47911

Service List

Served via U.S. Mail, except those parties whose contact information includes an e-mail address were served via CM/ECF or e-mail.

<b><u>US Trustee and Other Required Parties</u></b>
U.S. Trustee's Office 1015 US Courthouse 300 S Fourth St Minneapolis MN 55415 <a href="mailto:ustpreion12.mn.ecf@usdoj.gov">ustpreion12.mn.ecf@usdoj.gov</a>
Michael Fadlovich 1015 US Courthouse 300 S. Fourth Street Minneapolis, MN 55415 <a href="mailto:michael.fadlovich@usdoj.gov">michael.fadlovich@usdoj.gov</a>
IRS District Counsel 380 Jackson St, Ste 650 St Paul MN 55101-4804
Internal Revenue Service Wells Fargo Place 30 E 7th St, Mail Stop 5700 St Paul MN 55101
MN Department of Revenue Collection Enforcement 551 Bankruptcy Section 600 North Robert Street PO Box 64447 St Paul MN 55101-2228
US Attorney 600 US Courthouse 300 S Fourth St Minneapolis MN 55415
Minnesota Department of Economic Security 332 Minnesota Street St. Paul MN 55101-1351

<b><u>Debtors</u></b>
Forest Lake Apts Housing Assoc, LLC 3853 Central Ave NE Minneapolis, MN 55421
Hyder R. Jaweed 3 Blue Spruce Court North Oaks, MN 55127

<b><u>Debtors' Creditors</u></b>
Commerce Bank 7650 Edinborough Way, #150 Edina, MN 55435
City of Forest Lake 220 N. Lake Street Forest Lake, MN 55025
Bank Mutual 4949 W. Brown Deer Rd P.O. Box 245034 Milwaukee WI 53224-9534
Qwest 100 S 5 <sup>th</sup> Street Suite 1075 Minneapolis, MN 55402
Walters P.O. Box 67 Circle Pines, MN 55014

Washington County 14949 62 <sup>nd</sup> St. N. P.O. Box 200 Stillwater, MN 55082-0200
Xcel Energy P.O. Box 9477 Minneapolis, MN 55484-9477
City of Newport 596 7 <sup>th</sup> Street Newport, MN 55055
Integra Telecom 1201 N.E. Lloyd Blvd Suite 500 Portland, OR 97232-1259
Rent.com Dept. 1987 P.O. Box 1987 Los Angeles, CA 90084-1987

<b><u>Other Interested Parties</u></b>
Nell E. Matthews Lindquist & Venum 4200 IDS Center, 80 S. 8 <sup>th</sup> St. Minneapolis, MN 55402-2274 <a href="mailto:nmathews@lindquist.com">nmathews@lindquist.com</a>
Richard G. Jensen Fabyanske, Westra, Hart & Thomson, P.A. 800 Lasalle Ave. Suite 1900 Minneapolis, MN 55402 <a href="mailto:rgjensen@fwhtlaw.com">rgjensen@fwhtlaw.com</a>

Forest Lake Apartments Housing Associates, LLC - Bky No. 10-47911  
Service List

Served via U.S. Mail, except those parties whose contact information includes an e-mail address were served via CM/ECF or e-mail.

ADVANCED HOME  
IMPROVEMENT  
9 CENTRAL AVE  
OSSEO MN 55369

CARLSON, MISTY  
1255 - 11TH AVE SW #106  
FOREST LAKE MN 55025

FAMERS INSURANCE  
PO BOX 0914  
CAROL STREAM IL 60132

ANDERSON, ASHLEY  
1255 - 11TH AVE SW #201  
FOREST LAKE MN 55025

CARLSON, RICHARD  
1243 - 11TH AVE SW #302  
FOREST LAKE MN 55025

FARMERS INSURANCE  
PO BOX 0914  
CAROL STREAM IL 60132

ARNDT, BERNADETTE  
1255 - 11TH AVE SW #202  
FOREST LAKE MN 55025

CARUSO, JEFFERY  
1267 - 11TH AVE SW #202  
FOREST LAKE MN 55025

FICKEN, LORRI  
1243 - 11TH AVE SW #104  
FOREST LAKE MN 55025

ARNDT, KENNETH  
1255 - 11TH AVE SW #205  
FOREST LAKE MN 55025

CITY WIDE LOCKSMITHING  
INC  
4054 CENTRAL AVE  
MINNEAPOLIS MN 55421

FLORES, XOCHILP  
1243 - 11TH AVE SW #201  
FOREST LAKE MN 55025

BEESLEY, KENNETH  
1267 - 11TH AVE SW #305  
FOREST LAKE MN 55025

COLBURN, KIRK  
1255 - 11TH AVE SW #303  
FOREST LAKE MN 55025

FOGEL, RENEE  
1243 - 11TH AVE SW #207  
FOREST LAKE MN 55025

BIXBY, JOEL  
1243 - 11TH AVE SW #306  
FOREST LAKE MN 55025

DAY, JODI  
1255 - 11TH AVE SW #302  
FOREST LAKE MN 55025

FRAHM, ANGIE  
1267 - 11TH AVE SW #201  
FOREST LAKE MN 55025

BLANKENSHIP, FAITH  
1267 - 11TH AVE SW #103  
FOREST LAKE MN 55025

DONAGER, ANDREW  
1267 - 11TH AVE SW #108  
FOREST LAKE MN 55025

FRANK, TRINA  
1243 - 11TH AVE SW #105  
FOREST LAKE MN 55025

BOUR JR., JEAN  
1255 - 11TH AVE SW #105  
FOREST LAKE MN 55025

DORGLASS INC  
6008 CULLIGAN WAY  
MINNETONKA MN 55345

FREUND, RONALD  
1243 - 11TH AVE SW #203  
FOREST LAKE MN 55025

BRANDT, ADAM  
1243 - 11TH AVE SW #202  
FOREST LAKE MN 55025

EAGAN, VICTORIA  
1267 - 11TH AVE SW #207  
FOREST LAKE MN 55025

FRYE, KIMBERLY  
1255 - 11TH AVE SW #103  
FOREST LAKE MN 55025

BURGESS, BRIAN  
1243 - 11TH AVE SW #308  
FOREST LAKE MN 55025

ECKMAN, JAMIE  
1267 - 11TH AVE SW #308  
FOREST LAKE MN 55025

GAY, STACEY  
1267 - 11TH AVE SW #302  
FOREST LAKE MN 55025

BURRESON, AMBER  
1243 - 11TH AVE SW #107  
FOREST LAKE MN 55025

ELLEFSON, MICHAEL  
1243 - 11TH AVE SW #304  
FOREST LAKE MN 55025

GERMAIN, KARYN E.  
680 - 12TH AVE SW APT 310  
FOREST LAKE MN 55025

Forest Lake Apartments Housing Associates, LLC - Bky No. 10-47911  
Service List

Served via U.S. Mail, except those parties whose contact information includes an e-mail address were served via CM/ECF or e-mail.

GIVENS, YON  
1243 - 11TH AVE SW #108  
FOREST LAKE MN 55025

GREINER IV, RICHARD  
1243 - 11TH AVE SW #106  
FOREST LAKE MN 55025

GRIFFITH, LORI  
1267 - 11TH AVE SW #306  
FOREST LAKE MN 55025

HAGEL, JOSHUA  
PO BOX 1119  
FOREST LAKE MN 55025

HAJNEY, JASON  
1243 - 11TH AVE SW #102  
FOREST LAKE MN 55025

HIRSHFIELD'S  
DECORATING CENTER  
725 - 2ND AVE N  
MINNEAPOLIS MN 55405

HUNT, RAYNARD  
1255 - 11TH AVE SW #308  
FOREST LAKE MN 55025

JASKIER, MICHAEL  
1267 - 11TH AVE SW #307  
FOREST LAKE MN 55025

JENSON, RAYMOND  
1255 - 11TH AVE SW #101  
FOREST LAKE MN 55025

JOHNS, KAREN  
1243 - 11TH AVE SW #307  
FOREST LAKE MN 55025

JUDITH ANN FLADER, ESQ.  
5993 DELLWOOD AVE  
SAINT PAUL MN 55126

KNOLL, JENNIFER

1267 - 11TH AVE SW #104  
FOREST LAKE MN 55025

KOLLAR, JAMES  
1255 - 11TH AVE SW #203  
FOREST LAKE MN 55025

KRINGLE, MARK  
1267 - 11TH AVE SW #106  
FOREST LAKE MN 55025

LIPPAI, CSABA  
1255 - 11TH AVE SW #304  
FOREST LAKE MN 55025

LOWERS, BRANDI  
1255 - 11TH AVE SW #305  
FOREST LAKE MN 55025

MAIN, DENNI  
1255 - 11TH AVE SW #306  
FOREST LAKE MN 55025

MAYA, LEOBARDO  
1267 - 11TH AVE SW #208  
FOREST LAKE MN 55025

MESIC, HAJRUDIN  
1255 - 11TH AVE SW #301  
FOREST LAKE MN 55025

MILLER, FAY  
1267 - 11TH AVE SW #102  
FOREST LAKE MN 55025

MILLER, KRISTIAN  
1243 - 11TH AVE SW #204  
FOREST LAKE MN 55025

MORAN, ANDREW  
1267 - 11TH AVE SW #203  
FOREST LAKE MN 55025

NEWELL, JOSHUA  
1243 - 11TH AVE SW #205  
FOREST LAKE MN 55025

NOURSE, MELYNDA  
1267 - 11TH AVE SW #101  
FOREST LAKE MN 55025

OSTERBAUER, PETER  
1267 - 11TH AVE SW #105  
FOREST LAKE MN 55025

PALMER, BENJAMIN  
1267 - 11TH AVE SW #304  
FOREST LAKE MN 55025

PERDEW, SCOTTY  
1255 - 11TH AVE SW #108  
FOREST LAKE MN 55025

PETERSON, BRADLEY  
1267 - 11TH AVE SW #206  
FOREST LAKE MN 55025

PETERSON, TODD R.  
1243 - 11TH AVE SW #303  
FOREST LAKE MN 55025

PLUNKETT'S PEST  
CONTROL  
40 NE 52ND WAY  
MINNEAPOLIS MN 55421

QUESNEL, WENDY  
1267 - 11TH AVE SW #107  
FOREST LAKE MN 55025

Qwest Corporation  
1801 California St Rm 900  
Attn: Bankruptcy  
Denver CO 80202

RENTAL HISTORY REPORTS  
1050 WAYZATA BLVD STE  
200  
HOPKINS MN 55305

RYDEEN, ROBIN  
1267 - 11TH AVE SW #303  
FOREST LAKE MN 55025

Forest Lake Apartments Housing Associates, LLC - Bky No. 10-47911

Service List

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SIMBECK, THOMAS  
1243 - 11TH AVE SW #103  
FOREST LAKE MN 55025

SISCO, AMANDA  
1255 - 11TH AVE SW #207  
FOREST LAKE MN 55025

SMITH, BILLIEJUNE  
1243 - 11TH AVE SW #301  
FOREST LAKE MN 55025

STARKEY, TIFFANY  
1243 - 11TH AVE SW #208  
FOREST LAKE MN 55025

STOLZ, TRACY  
1267 - 11TH AVE SW #205  
FOREST LAKE MN 55025

STRANTZ, GERALD J.  
658 - 12TH ST SW, APT. 102  
FOREST LAKE MN 55025

STRANTZ, ROLAND S.  
16325 CORNELL ST NE  
FOREST LAKE MN 55025

SUBURBAN GLASS &  
MIRROR INC  
669 SW 15TH ST  
FOREST LAKE MN 55025

TRUGREEN  
4240 CENTERVILLE RD  
SAINT PAUL MN 55127

TRUSTED EMPLOYEES  
10505 WAYZATA BLVD STE  
200  
HOPKINS MN 55305

TYLER, CHRIS  
1243 - 11TH AVE SW #305  
FOREST LAKE MN 55025

WILLIAMS, ELIZABETH

1267 - 11TH AVE SW #301  
FOREST LAKE MN 55025

WILSON, EDWARD  
1255 - 11TH AVE SW #107  
FOREST LAKE MN 55025

XCEL ENERGY  
3215 COMMERCE ST  
LA CROSSE WI 54603

YOBIE, JAMES  
1255 - 11TH AVE SW #104  
FOREST LAKE MN 55025

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In re:

BKY 10-47911

Forest Lake Apartments Housing Associates, LLC,  
Debtor.

Chapter 11 Case

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**ORDER DISMISSING CHAPTER 11 CASE**

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The matter is before the court on the debtor's motion to dismiss this proceeding. Based on the findings of fact and conclusions of law stated orally at the hearing,

IT IS ORDERED:

This case is dismissed.

Dated:

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Robert J. Kressel  
United States Bankruptcy Judge